Supreme Court
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No.

IN THE

Supreme Court of the United States

COAST AUTOMOTIVE GROUP LTD.,

Petitioner,

v.

VOLKSWAGEN CREDIT, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Third Circuit improperly disregarded the precedent of *VW Credit v. Coast Automotive Group, Ltd, et. al., VOA and AOA, et. al.*, 346 N.J. Super. 326, 787 A. 2d 951 (App. Div. 2002), certif. denied 172 N.J. 178 (2002) in which the Superior Court, Appellate Division, held that Coast was eligible for relief under the New Jersey Franchise Practices Act?

2. The New Jersey Franchise Practices Act being grounded in common law contract law, is there a difference between a "termination" claim"(for which "good faith" is generally irrelevant) and a "non-termination" claim under The New Jersey Franchise Practices Act(where issues of "good faith performance by a franchisor", "waiver of alleged defaults by a franchisor", and a "failure to terminate by a franchisor" may all be factors)?

3. Whether the Federal Courts recognize The New Jersey Franchise Practices Act as an enhancement of common law protections available to franchisees, or something less than that, as held by the Third Circuit in this matter?

4. Whether, on Count 18 of Coast's complaint (Coast's claim under the N.J.S.A. §56:10-7(e)), it was legal error and a misstatement of the law for the jury to have been charged on N.J.S.A. §56:10-9 and for the Verdict Sheet Question 6 to have been given?

5. Whether, on Count 18 of Coast's complaint (Coast's claim under the N.J.S.A. §56:10-7(e)), it was legal error and a misstatement of the law for the jury to have been charged

on N.J.S.A. §56:10-9 and for the Verdict Sheet Question 6 to have been given, particularly where VOA and AOA had stipulated (55a) they did not attempt to terminate the contractual franchise relationship during the relevant period and where, as a matter of law, VOA and AOA were required to do business with Coast because of the "Automatic Stay Doctrine" imposed by Coast's Chapter 11 proceeding.?

6. Whether the instruction under N.J.S.A. §56:10-9 and Verdict Sheet Question 6 were erroneous because there was no factual relationship drawn between Coast's affirmative allocation claims and the alleged substantial non-compliance?

7. Whether as a matter of New Jersey law, Coast's method of purchasing vehicles was substantially compliant and, thus, the instruction under N.J.S.A. §56:10-9 was in error as a matter of law?

8. Whether the district court erred in giving an instruction and verdict sheet question under N.J.S.A. §56:10-9 since Coast was a franchisee with all of its rights intact?

9. Whether, even if an instruction and verdict sheet question under N.J.S.A. §56:10-9 were permissible on Count 18 of Coast's complaint, the substantial and credible weight of evidence did not support a finding against Coast on verdict sheet question 6?

10. Whether, as to Count 17 of plaintiff's complaint, the jury's finding on verdict sheet question 2 was against the substantial weight of the credible evidence of the record?

11. Whether it was error for Coast to be prohibited from offering testimony as to the actions of VW Credit employees as to the coercive and intimidating atmosphere relative to Count 17 of plaintiff's complaint?

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STATEMENT OF JURISDICTION

Petitioner Coast Automotive Group, Ltd. respectfully submits that pursuant to 28 U.S.C. §1254 (1) jurisdiction exists for this Court to hear this petition for a *writ of certiorari*. On February 25, 2005, the United States Court of Appeals for the Third Circuit entered an Order denying the motion for rehearing of Coast Automotive Group, Ltd. of the January 25, 2005 Judgment of the Third Circuit. The January 25, 2005 Judgment affirmed the October 30, 2002 judgment became final on January 8, 2003 and from which Coast Automotive Group, Ltd. filed a timely appeal.

STATEMENT OF CASE

On December 12, 1995, VW Credit filed an Order to Show Cause with Temporary Restraints in the Superior Court of New Jersey, Ocean County, Chancery Division, against Coast (and other related parties) alleging that Coast took too many days to repay VW Credit on principal advances on Coast's new vehicle floor-plan line of credit. VW Credit called Coast into default and accelerated the $6 million in floor-plan financing through which Coast had purchased its new vehicle inventory since 1991.

On December 15, 1995, Coast filed a voluntary petition for Chapter 11 Reorganization in what was essentially a single-creditor case. On January 21, 1997, Coast, not a part of the state court litigation by virtue of its Chapter 11 filing, filed an adversary proceeding against VW Credit, certain individual employees of VW Credit, alleging that VW Credit's call of default against Coast was wrongful. Coast also named as defendants Volkswagen of America ("VOA") and

Audi of America("AOA"), VW Credit's parent companies in an effort to drive Coast out of business had intentionally stopped shipping vehicles to Coast after its Chapter 11 filing causing the dealership to suffer severe losses. Coast's claims against VOA and AOA were the subject matter of the trial and the present petition. The reference number was withdrawn and the matter came before the Hon. Garrett E. Brown, U.S.D.J.

On September 18, 1997, Coast dismissed its Chapter 11 proceeding with VW Credit being paid the accelerated balance under the prior floor-plan. By Order of April 24, 1998, the district court dismissed substantially all of Coast's complaint against VW Credit, including its breach of contract and breach of implied duty of good faith counts. By order of October 6, 1999, the district court dismissed the remaining two counts of Coast's complaint against VW Credit. The district court certified its two summary judgment orders as final and Coast filed a notice of appeal.

On or about April 6, 2001, the district court denied Coast's motion to stay or dismiss this proceeding in favor of the parallel state court matter and also denied VOA's and AOA's cross-motions for summary judgment.

On September 5, 2001, Coast, on the one hand, and Volkswagen of America and Audi of America on the other hand commenced trial on the remaining counts of Coast' complaint, Counts 17 and 18 of Coast's Supplemental Complaint. The claims were based upon VOA's and AOA's intentional deprivation of vehicles to Coast which began immediately after Coast filed its Chapter 11 petition. Under

Count 17, the jury found that VOA and AOA violated their contractual obligation to Coast to "provide a fair and equitable allocation of vehicles." 28a. Despite this, the jury did not find that VOA's and AOA's actions amounted to coercion within the meaning of the statute. 29a. Furthermore, under Count 18, the jury found that VOA and AOA violated N.J.S.A. 56:10-7(e)(which codifies the duty of good faith and fair dealing) by imposing unreasonable standards of performance upon Coast and trying to drive Coast out of business. 30a Verdict Sheet Question 5. In instructing the jury (53a-58a), over Coast's vehement written and oral objection, the district court interposed a jury instruction on N.J.S.A. 56:10-9 as a technical defense to Coast's claim, notwithstanding the fact that the model jury charge on the "duty of good faith and fair dealing" takes into account whether or not a complainant is being deprived of a benefit through its own failures or the actions of the accused. 30a Verdict Sheet Question 6. Thereafter, Coast moved for post-trial relief, which was denied. 26a.

On or about January 29, 2002, the United States Court of Appeals for the Third Circuit reversed the district court's finding based upon "judicial estoppel" that Coast had defaulted to VW Credit and remanded Coast's claims for breach of contract, breach of duty of good faith and fair dealing, lender liability and intentional discrimination. *See Coast Automotive Group, Ltd. v. VW Credit, Inc.*, 34 Fed. Appx. 818, 2002 WL 121932 (3rd Cir. (N.J.))

On or about October 30, 2002, the district court issued an opinion in the bench claims tried before it in the September 5-12, 2001 trial as well as entering judgment in favor of